

**CHAPTER 1 OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS**

## Secs.

100	Administration and Enforcement
101	Notice of Intended Action and Right to a Hearing
102	Failure to Request a Hearing or Failure to Appear
103	Hearing Notice Procedures
104	Service of Notice
105	Conduct of Hearings
106	Powers of the Hearing Body
107	Burden of Proof
108	Transcript of Proceedings
109	Findings and Decisions
110	Reopening Proceedings
111	Judicial Review
112	Reconsideration or Reinstatement
113	Severability of Provisions
199	Definitions

**100 ADMINISTRATION AND ENFORCEMENT**

100.1 The provisions of this chapter shall apply to the following licensing and examining boards and commissions:

- (a) Board of Examiners and Registrars of Architects;
- (b) Board of Barber Examiners;
- (c) Board of Cosmetology;
- (d) Electrical Board;
- (e) Plumbing Board;
- (f) Board of Registration for Professional Engineers;
- (g) Refrigeration and Air Conditioning Board; and
- (h) Steam and Other Operating Engineers Board.

100.2 A board or commission may do the following:

- (a) Refuse to issue or renew a license;

- (b) Revoke, suspend, or cancel any license; or
- (c) Censure the holder of a license for any reason for which such action is permitted under the laws or regulations of the District governing the practice of the businesses and professions regulated by that board or commission.

## 100.3

A board or commission may, upon its own motion, and shall upon the sworn complaint in writing of any person setting forth charges which, if proved, would constitute grounds for disciplinary action, request the Director to investigate the actions of any person who is an applicant for or holder of any license provided for in the Act.

**AUTHORITY:** The statutory authority to regulate the eight boards appears at the end of this chapter. Paragraphs §§402(12), (54), (57), (60), (61), (62), (64), and (65) of Reorganization Plan No. 3, D.C. Code 1973, Vol. 1 at 152 vested that regulatory authority in the District of Columbia Council.

**SOURCE:** Sections 1.2 and 1.3 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR, §§1.2 and 1.3, 18 DCR 436 (February 22, 1972), as amended by Regulation No. 72-30, 19 DCR 480 (January 8, 1973).

**HISTORICAL NOTE:** Regulation 72-3, as amended, lists twenty-one boards and commissions: namely, Board of Accountancy, Board of Examiners and Registrars of Architects, Board of Barber Examiners, Boxing Commission, Board of Cosmetology, Board of Dental Examiners, Electrical Board, Commission on Licensure to Practice the Healing Art, Nurses' Examining Board, Board of Optometry, Board of Pharmacy, Physical Therapists Examining Board, Plumbing Board, Board of Podiatry Examiners, Practical Nurses Examining Board, Board of Registration for Professional Engineers, Real Estate Commission, Refrigeration and Air Conditioning Board, Steam and Other Operating Engineers Board, Board of Funeral Directors and Embalmers, and Board of Examiners in Veterinary Medicine. The following statutes enacted by the Council of the District of Columbia either superceded or repealed earlier provisions of law relative to the regulation of thirteen of those boards or commissions:

(1) Section 4 of the District of Columbia Public Accountancy Act of 1977, D.C. Law 2-59, 24 DCR 5975 (January 20, 1978), established a new 5-member Board of Accountancy replacing that board created under the District of Columbia Certified Public Accountancy Act of 1966, 80 Stat. 785, D.C. Code 1973, §2-911.

(2) Section 5(a) of the District of Columbia Boxing and Wrestling Commission Act, D.C. Law 1-20, 22 DCR 649 (July 25, 1975), created a three-member Boxing and Wrestling Commission replacing the Boxing Commission created in An Act to regulate boxing contests and exhibitions in the District of Columbia, and for other purposes, approved December 20, 1944, 58 Stat. 823, ch. 812, D.C. Code 1973, §2-1210.

(3) Sections 4(a) and 34 of the District of Columbia Real Estate Licensure Act of 1982, D.C. Law 4-209, 30 DCR 390 (January 28, 1983), effective March 10, 1983, established a seven-member real estate commission and repealed An Act to define, regulate and license real estate, brokers, business chance brokers, and real estate salesman; to create a Real Estate Commission in the District of Columbia; to protect the public against fraud in real estate transactions; and for other purposes, approved August 25, 1937 (50 Stat. 787, D.C. Code 1967, §§45-1901 *et seq.*).

(4) Sections 4(a) and 22 of the District of Columbia Funeral Services Regulatory Act of 1984, D.C. Law 5-84, 31 DCR 1815 (April 20, 1984), effective May 22, 1984, created a five-member board and abolished the earlier board established under paragraph 44A(d)(2) of §7 of An Act making appropriation to provide for expenses of the government of the District of Columbia for fiscal year ending June 30, 1903, and for other purposes, approved August 1, 1947 (61 Stat. 711; D.C. Code §47-2873).

(5) Sections 6 and 20 of the Veterinary Practice Act of 1982, D.C. Law 4-171, 29 DCR 5297 (December 3, 1982), effective March 9, 1983, established a Board Veterinary Examiners and repealed An Act to regulate the practice of veterinary medicine in the District of Columbia, approved April 20, 1908 (35 Stat. 64, D.C. Code §32-101 (1981)).

(6) Sections 201, 203, 204, 207, 208, 209, and 210 of the District of Columbia Health Occupations Revision Act of 1985, D.C. Law 6-99, 33 DCR 729 (February 7, 1986), effective March 25, 1986, created the Board of Dentistry, Board of Medicine, Board of Nursing, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Podiatry, respectively; and

(7) Sections 1104(a), (b), (c), (d), (e), (f), and (g) of that Act repealed An Act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto, approved June 6, 1982 (27 Stat. 42; D.C. Code §2-1201 *et seq.*); Title I of An Act to define the term of "registered nurse" and to provide for the registration of nurses in the District of Columbia, approved February 9, 1907 (34 Stat. 887, D.C. Code §2-1701.1 to 2-1701.10); An Act To regulate the practice of podiatry in the District of Columbia, approved May 23, 1918 (40 Stat. 560, D.C. Code §2-2201 *et seq.*); An Act To regulate the practice of optometry in the District of Columbia, approved May 28, 1924 (43 Stat. 177, D.C. Code §2-1801 *et seq.*); the Healing Arts Practice Act, District of Columbia, 1928, approved February 27, 1929 (45 Stat. 1326; D.C. Code §§2-1301 to 2-1343); the District of Columbia Practical Nurses' Licensing Act, approved September 6, 1960 (74 Stat. 802, D.C. Code §§2-1702.1 to 2-1702.19); and the Physical Therapists practice Act, approved September 22, 1961 (89 Stat. 1955, D.C. Code §§2-1703.1 to 2-1703.21).

## 101

## NOTICE OF INTENDED ACTION AND RIGHT TO A HEARING

## 101.1

Each applicant for or holder of a license, except applicants for a temporary license or applicants for reinstatement after revocation, shall be afforded notice and an



opportunity to be heard prior to the action of a board or commission, if the effect of the action would be one of the following:

- (a) To deny permission to take an examination for a license for which an applicant has correctly filed and whose application has been accepted as meeting the qualifications for examination;
- (b) To deny a license after an examination for any cause other than failure to pass the examination;
- (c) To deny a license by reciprocity, endorsement, or transfer to an applicant who meets the qualifications for the license;
- (d) To suspend a license;
- (e) To revoke a license;
- (f) To cancel a license;
- (g) To censure a licensee; or
- (h) To refuse to issue a renewal by annual registration for any cause other than failure to pay the prescribed renewal fee.

101.2 When the board or commission proposes taking any action of the type specified in §101.1(a), (b), or (c), it shall give written notice to the applicant. The notice shall contain the following:

- (a) A statement that the applicant has failed to satisfy the board as to his or her qualifications to sit for examination or to be approved for licensure, as the case may be;
- (b) A statement indicating in what respect the applicant has failed to satisfy the board or commission; and
- (c) A statement that the applicant may secure a hearing before the board or commission by depositing in the mail within twenty (20) days after service of the notice, a certified letter addressed to the board or commission and containing a request for a hearing.

101.3 If a board or commission proposes taking any action of the type set forth in §101.1(d), (e), (f), (g), or (h), it shall give written notice to the person concerned. The notice shall contain the following:

- (a) A statement that the board or commission has sufficient evidence, and setting forth the nature of the evidence, which, if not rebutted or explained, justifies taking the proposed action; and
- (b) A statement that the board or commission will take the proposed action unless the person concerned requests a hearing by certified letter addressed to the board or commission, mailed within twenty (20) days after service of the notice.

**SOURCE:** Sections §§20.1 and 20.2 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §§20.1 and 20.2, 18 DCR 436 (February 22, 1972).

## **102 FAILURE TO REQUEST A HEARING OR FAILURE TO APPEAR**

102.1 If the person concerned does not mail a request for a hearing within the time and in the manner required under §101, the board or commission may, without a hearing, take the action contemplated in the notice.

102.2 The board or commission shall, in writing, inform the person concerned, the Corporation Counsel, and the Director of the action taken under this section.

102.3 If a person who requested a hearing does not appear for the hearing, and no continuance has been or is granted, the board or commission may hear the evidence of the witnesses who do appear, and the board or commission may proceed to consider the matter and render a decision on the basis of evidence before it, in the manner required by this chapter.

**SOURCE:** Sections §§20.3 and 30.3 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §§20.3 and 30.3, 18 DCR 436 (February 22, 1972).

## **103 HEARING NOTICE PROCEDURES**

103.1 If the person concerned does request a hearing as required in §101, the board or commission shall, within twenty (20) days following receipt of the request, notify the person concerned of the time and place of the hearing.

103.2 The hearing shall be held by the board or commission not more than sixty (60) days nor less than thirty (30) days following the date of service of the notice, unless specifically stated otherwise in the Act.

**SOURCE:** Section 30.1 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §30.1, 18 DCR 436 (February 22, 1972).

## **104 SERVICE OF NOTICE**

104.1 Any notice required by §101 or §103 may be served either personally by the Director or by certified mail, return receipt requested, directed to the person concerned at the person's last known residence or business address as shown by the records of the Department.

104.2 If notice is served personally, it shall be deemed to have been served at the time when delivery is made to the person concerned.

104.3 If notice is served by certified mail, it shall be deemed to have been served on the date shown on the return receipt showing delivery of the notice to the person concerned or refusal of the person concerned to accept delivery of the notice.

104.4 If the person concerned is no longer at the last known address as shown by the records of the Department, and no forwarding address is available, the notice shall be deemed to have been served on the date the return receipt bearing that notification is received by the Director.



**SOURCE:** Section 30.2 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §30.2, 18 DCR 436 (February 22, 1972).

## **105 CONDUCT OF HEARINGS**

- 105.1 Each hearing before a board or commission shall be open to the public.
- 105.2 At each hearing, at least a majority of the members of the board or commission shall be present to hear the evidence and render a decision.
- 105.3 A person entitled to a hearing shall have the following rights:
- (a) The right to be represented by counsel;
  - (b) The right to present all relevant evidence by means of witnesses and books, papers, and other documents;
  - (c) The right to examine all opposing witnesses on any matter relevant to the issues; and
  - (d) The right to have subpoenas issued to compel the attendance of witnesses and the production of relevant books, papers, and other documents upon making written request for subpoenas to the board or commission.
- 105.5 In all proceedings held by a board or commission, it shall receive and consider any evidence or testimony. However, it may exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence or testimony.

**SOURCE:** Sections 40.1, 40.2, 40.3 and 40.6 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §§40.1, 40.2, 40.3 and 40.6, 18 DCR 436 (February 22, 1972).

## **106 POWERS OF THE HEARING BODY**

- 106.1 In connection with any hearing held pursuant to §101, a board or commission shall have the following powers:
- (a) To request the Mayor to appoint counsel from the Office of the Corporation Counsel to represent the District in any case before the board or commission;
  - (b) To administer oaths or affirmations, either personally or through a designated agent, to witnesses called to testify;
  - (c) To subpoena respondents and other witnesses and relevant books, papers, and documents;
  - (d) To take testimony and to examine witnesses; and
  - (e) To direct continuance of any case without regard to the limitation in §103.2.
- 106.2 In proceedings before a board or commission, if any person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness, refuses to be examined,

or refuses to obey any lawful order of the board or commission contained in its decision rendered after a hearing, the board or commission may apply to the proper court for an order requiring obedience.

**SOURCE:** Sections 40.4 and 40.5 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §§40.4 and 40.5, 18 DCR 436 (February 22, 1972).

## **107 BURDEN OF PROOF**

107.1 In any board or commission proceeding resulting from a proposed action to deny licensure, the applicant shall have the burden of satisfying the board or commission of his or her qualifications.

107.2 In any proceeding resulting from the proposed action of a board or commission to refuse to renew, to cancel, to suspend, or to revoke a license, or to censure a licensee, the District shall have the burden of proving that the action should be taken.

**SOURCE:** Section 40.7 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §40.7, 18 DCR 436 (February 22, 1972).

## **108 TRANSCRIPTS OF PROCEEDINGS**

108.1 In all hearings conducted under this chapter, a complete record shall be made of all evidence presented during the course of a hearing.

108.2 Any party to the proceedings desiring it shall be furnished with a copy of the record, upon payment of the fee prescribed by the Mayor.

**SOURCE:** Section 40.8 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §40.8, 18 DCR 436 (February 22, 1972).

## **109 FINDINGS AND DECISIONS**

109.1 The members of the board or commission who conduct the hearing shall render their decision, in writing, as soon as practicable, but not later than ninety (90) days after the date the hearing is completed.

109.2 The decision of the board or commission shall contain the following:

- (a) Findings of fact made by the board or commission;
- (b) Application by the board or commission of the Act and this title to the facts as found by the board or commission;
- (c) The decision of the board or commission based upon its findings of fact and application of the laws and regulations; and
- (d) A statement informing the person concerned of the right to have the decision reviewed by the D.C. Court of Appeals, and the time within which judicial review must be sought.

109.3 Within five (5) days after the decision is rendered, the board or commission shall serve upon the person concerned, or that person's attorney of record, a copy of the written decision either personally or by certified mail.



- 109.4 If the decision is sent by certified mail, it shall be deemed to have been served on the date contained on the return receipt, or on the date of the refusal of the person concerned to receive notice, or on the date of the unsuccessful attempt of the postal service to make delivery.

**SOURCE:** Sections 50.1, 50.2, and 50.3 of Regulation No. 72.3, approved January 28, 1972, 5DD DCRR §§50.1, 50.2, and 50.3, 18 DCR 436 (February 22, 1972).

## **110 REOPENING PROCEEDINGS**

- 110.1 If, because of accident, sickness, or other good cause, a person fails to receive a hearing or fails to appear for a hearing which he or she has requested, the person may, within thirty (30) days from the date of the decision of the board or commission apply to the board or commission to reopen the proceedings.

- 110.2 The board or commission, upon finding sufficient cause, shall fix immediately a time and place for a hearing and give the person, the Corporation Counsel, and the Director notice of the hearing (§103.2).

- 110.3 The board or commission may also reopen a proceeding for any other cause sufficient to it, provided no appeal is pending before a court or has been decided by a court.

**SOURCE:** Section 60.1 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §60.1, 18 DCR 436 (February 22, 1972).

## **111 JUDICIAL REVIEW**

- 111.1 A person aggrieved by an adverse decision of a board or commission, issued after a hearing, may seek a review of the decision by the District of Columbia Court of Appeals.

- 111.2 Failure to seek judicial review in the manner and within the time as the Court of Appeals by rule may prescribe, shall result in the decision of the board or commission becoming final.

- 111.3 Within the time fixed by rule of the D.C. Court of Appeals, the board or commission shall certify and file with the Clerk of the Court, the record of the case, comprised of the following:

- (a) A copy of the notice of proposed action and right to a hearing under §101;
- (b) A copy of the notice of the hearing required under §102;
- (c) A complete transcript of the testimony taken at the hearing;
- (d) Copies of all pertinent documents and other written evidence introduced at the hearing; and
- (e) A copy of the written decision of the board or commission.

- 111.4 The record may be shortened if, with permission of the Court, all parties to the review proceedings so stipulate.

**SOURCE:** Sections 60.2 and 60.3 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §§60.2 and 60.3, 18 DCR 436 (February 22, 1972).

## **112 RECONSIDERATION OR REINSTATEMENT**

112.1 A person whose application for a license or renewal of a license has been denied or whose license has been cancelled, suspended, or revoked may, by filing a new application accompanied by the proper fee, request the board or commission to reconsider the matter.

112.2 Upon showing of cause satisfactory to it, a board or commission may issue the license or renewal of license.

**SOURCE:** Section 60.4 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §60.4, 18 DCR 436 (February 22, 1972).

## **113 SEVERABILITY OF PROVISIONS**

113.1 If any part of this title is declared invalid, or the applicability of any provision of this chapter to any person or circumstance is held invalid, the validity of the remainder of the provisions of this title and their applicability to other persons and circumstances shall not be affected.

**SOURCE:** Section 60.4 of Regulation No. 72-3, approved January 28, 1972, 5DD DCRR §60.4, 18 DCR 436 (February 22, 1972).

## **199 DEFINITIONS**

199.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

**Act** - the law, statute, or order pursuant to which a board or commission was created or presently exists.

**Board** - an occupational or professional licensing body of the government of the District of Columbia. The boards that are subject to the provisions of this chapter are set forth in §100.1 of this title.

**Director** - the Director of the District department or agency to whom the responsibility and authority to implement and enforce this title has been delegated by the Mayor, or the Director's designated agent or representative.

**License** - the term includes any approval, certificate, registration, permit, statutory exemption, or other form of permission to practice an occupation or profession, as granted by a board or commission.

**Licensee** - the holder of any license granted by a board or commission.

**Person** - any individual, corporation, company, association, partnership, firm, organization, or society.



**Renewal** - the certificate of annual registration granted by a board or commission to a licensee.

**SOURCE:** Sections 60.4 of Regulation 72.3, approved January 28, 1972, 5DD DCRR §60.4, 18 DCR 436 (February 22, 1972).

**HISTORICAL NOTE:** The following Acts specifically authorized the Commissioners of the District of Columbia to provide regulations for the eight boards listed, and either established the original boards or authorized the Commissioners to establish the boards:

**Board of Barber Examiners** - An act to regulate Barbers in the District of Columbia and for other purposes, approved June 7, 1938, 52 Stat. 620, ch. 322, D.C. Code §§2-401 *et seq.* (1988 Repl. Vol.).

**Board of Cosmetology** - An Act to provide for the examination and licensing of those engaging in the practice of cosmetology in the District of Columbia, approved June 7, 1938, 52 Stat. 611, ch. 321, D.C. Code §§2-901 *et seq.* (1988 Repl. Vol.).

**Board of Examiners and Registrars of Architects** - An Act to provide for the examination and registration of architects and to regulate the practice of architecture in the District of Columbia, 43 Stat. 713, ch. 9, approved December 13, 1924, D.C. Code §§2-201 *et seq.* (1988 Repl. Vol.).

**Board of Registration for Professional Engineers** - An Act defining and regulating the practice of the profession engineering and creating a board of registration for professional engineers in the District of Columbia, approved September 19, 1950, 64 Stat. 854, ch. 953, D.C. Code §§2-2301 *et seq.* (1988 Repl. Vol.).

**Electrical Board** - An Act to grant additional powers to the Commissioners of the District of Columbia and for other purposes, approved December 20, 1944, 58 Stat. 819, ch. 611, D.C. Code §1-337 (1987 Repl. Vol.).

**Plumbing Board** - An act to regulate plumbing and gas fitting in the District of Columbia, approved June 18, 1898, 30 Stat. 477, ch. 467, D.C. Code §§2-2102 *et seq.* (1988 Repl. Vol.).

**Refrigeration and Air Conditioning Board** - An Act to grant additional powers for the Commissions of the District of Columbia, approved December 20, 1944, 58 Stat. 819, ch. 611, D.C. Code §1-337 (1987 Repl. Vol.).

**Steam and Other Operating Engineers Boards** - An act to regulate steam-engineering in the District of Columbia, approved February 28, 1887, 24 Stat. 427, ch. 272, D.C. Code §§2-2401 *et seq.* (1988 Repl. Vol.).

Reorganization Plan No. 3 of 1952, (D.C. Code 1973, Title 1 Appendix at 147): (1) abolished the original boards; (2) vested in the Board of Commissioners all of the functions of the boards; (3) authorized the Commissioners to establish new boards; and (4) reserved in the Commissioners the function of making or adopting substantive regulations previously assigned to the Commissioners by Congressional statutes. Pursuant to Reorganization Plan No. 5, the Board of Commissioners on June 30, 1953, issued Reorganization Order No. 59 establishing seven of the above listed boards. On October 18, 1955, the Board of Commissioners issued Organization Order No. 115 establishing the eighth board, the Refrigeration and Air Conditioning Board (see Commissioners' Order No. 55-2028, October 18, 1955). After several amendments and reorganizations, the Mayor transferred these eight boards to the Department of Consumer and Regulatory Affairs (see Reorganization Plan No. 1 of 1983, D.C. Code, 1989 Suppl. at 32). By virtue of the provisions of §402 of Reorganization Plan No. 3 of 1967, the function of issuing substantive regulations governing the examination and licensing of the various occupations was transferred to the District of Columbia Council. Section 404(a) of the District of Columbia Self-Government and Governmental Reorganization Act transferred all functions of the District of Columbia Council to the Council of the District of Columbia.

